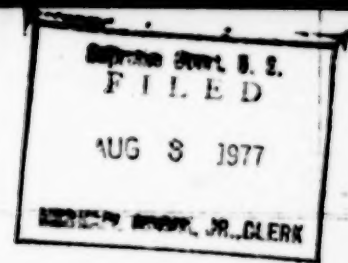


E

76-6784



76-6784

IN THE SUPREME COURT OF THE UNITED STATES

May Term, 1977

No. \_\_\_\_\_

CARL LAMONT BAYLESS

Petitioner

-vs-

THE STATE OF OHIO

Respondent

\*\*\*\*\*

ADDENDUM TO RESPONDENT'S ANSWER

TO

PETITION FOR A WRIT OF CERTIORARI

From the Supreme Court of Ohio

\*\*\*\*\*

STEPHAN M. GABALAC  
Prosecuting Attorney

CARL M. LAYMAN III  
Assistant Prosecuting Attorney  
Appellate Review Division  
City-County Safety Building  
53 East Center Street  
Akron, Ohio 44308

216/379-5510

Counsel for Respondent

WILLIAM R. HOLLAND  
Attorney at Law  
912 Centran Building  
Akron, Ohio 44308

216/535-3371

Counsel for Petitioner

76-6784

PETITIONER'S FIRST REASON FOR  
GRANTING THE WRIT

THIS COURT SHOULD GRANT CERTIORARI TO REVIEW THE CONSTITUTIONAL VALIDITY OF PETITIONER'S SENTENCE OF DEATH.

PART E

OHIO CAPITAL SENTENCING PROCEDURES IMPERMISSABLY SHIFT TO THE DEFENDANT CONVICTED OF AGGRAVATED MURDER WITH SPECIFICATIONS THE BURDEN OF PROVING FACTS WHICH DISTINGUISH THOSE WHO MAY LIVE AND THOSE WHO MUST DIE.

In State v. Downs, 51 Ohio St.2d 47 (1977), (copy attached), the Ohio Supreme Court overruled paragraphs 11 and 12 of the syllabus of State v. Lockett, 49 Ohio St.2d 48, 358 N.E.2d 1062 (1976), and the language which appears in State v. Woods, 48 Ohio St.2d 127 at 135, 357 N.E.2d 1059 at 1065 (1976), which reads: "(t)his is particularly true since the defendant is required to establish duress or coercion by a preponderance of the evidence for purposes of mitigation." The opinion stated at page 53 that the trial court did not in either case:

"(require the) defendant convicted of aggravated murder to prove certain mitigating circumstances by a preponderance of the evidence in order to be sentenced to life imprisonment rather than to death..."

The sections cited were held to be dicta.

The Ohio Supreme Court in the Downs case held that neither the defendant nor the prosecution is required by

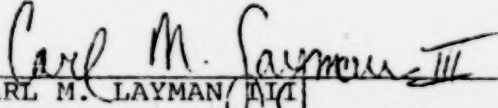
statute to offer testimony or other evidence of mitigating circumstances. Rather, the court has the initial responsibility to require that certain evidence be collected and certain examinations be made. From a careful consideration of those reports and evidence presented during the course of the trial, the judge, or panel of judges, decides whether mitigation is established by a preponderance of the evidence. This requires that the defendant bear the risk of nonpersuasion during the mitigation hearing, but does not impose an unconstitutional burden upon a defendant which would render the Ohio statutory framework for the imposition of capital punishment unconstitutional. Thus the defendant need not produce any evidence in the mitigation hearing, but if the evidence presented does not persuade the Court that a mitigating factor is present the defendant bears the risk of not presenting any evidence in support of mitigation.

Nor is the State constitutionally required to prove the lack of such mitigating factors beyond a reasonable doubt. The lack of mitigating factors is not an additional and constitutionally mandated element of a capital offense.

The State submits that any possible infirmity or misunderstanding with respect to the burden of proof in the mitigation hearing provided in R.C. 2929.04 has now been put to rest by State v. Downs, supra.

CERTIFICATION OF SERVICE

I, CARL M. LAYMAN III, being a member of the bar of the United States Supreme Court, do hereby certify, pursuant to Supreme Court Rule 33(3)(b), that one copy of the Addendum to Respondent's Answer to Petition for a Writ of Certiorari was mailed, first class postage paid, to: WILLIAM R. HOLLAND, Attorney at Law, 912 Centran Building, Akron, Ohio 44308.

  
CARL M. LAYMAN III  
Assistant Prosecuting Attorney  
Appellate Review Division  
City-County Safety Building  
53 East Center Street  
Akron, Ohio 44308

216/379-5510

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OPINION FROM STATE V. DOWNS

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Note: State v. Downs, 51 Ohio St.2d (1977), is the  
Opinion of the Court, and has not been reproduced  
here.